

By: Taylor

H.B. No. 819

Substitute the following for H.B. No. 819:

By: Callegari

C.S.H.B. No. 819

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the investment of retirement system funds  
in certain private business entities doing business in Iran.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 8, Government Code, is amended  
by adding Chapter 807 to read as follows:

CHAPTER 807. PROHIBITION ON INVESTMENT IN IRAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 807.001. DEFINITIONS. In this chapter:

(1) "Active business operations" means all business  
operations that are not inactive business operations.

(2) "Business operations" means engaging in commerce  
in any form in Iran, including by acquiring, developing,  
maintaining, owning, selling, possessing, leasing, or operating  
equipment, facilities, personnel, products, services, personal  
property, real property, or any other apparatus of business or  
commerce.

(3) "Company" means a sole proprietorship,  
organization, association, corporation, partnership, joint  
venture, limited partnership, limited liability partnership,  
limited liability company, or other entity or business association  
whose securities are publicly traded, including a wholly owned  
subsidiary, majority-owned subsidiary, parent company, or  
affiliate of those entities or business associations, that exists

1 to make a profit.

2 (4) "Direct holdings" means, with respect to a  
3 company, all securities of that company held directly by a state  
4 governmental entity in an account or fund in which a state  
5 governmental entity owns all shares or interests.

6 (5) "Inactive business operations" means the mere  
7 continued holding or renewal of rights to property previously  
8 operated to generate revenue but not presently deployed to generate  
9 revenue.

10 (6) "Indirect holdings" means, with respect to a  
11 company, all securities of that company held in an account or fund,  
12 such as a mutual fund, managed by one or more persons not employed  
13 by a state governmental entity, in which the state governmental  
14 entity owns shares or interests together with other investors not  
15 subject to the provisions of this chapter. The term does not  
16 include money invested under a plan described by Section 401(k) or  
17 457 of the Internal Revenue Code of 1986.

18 (7) "Listed company" means a company listed by the  
19 comptroller under Section 807.051.

20 (8) "Military equipment" means weapons, arms,  
21 military supplies, and equipment that readily may be used for  
22 military purposes, including radar systems and military-grade  
23 transport vehicles.

24 (9) "Scrutinized company" means a company that engages  
25 in scrutinized business operations described by Section 807.002.

26 (10) "State governmental entity" means:

27 (A) the Employees Retirement System of Texas,

1 including a retirement system administered by that system;  
2 (B) the Teacher Retirement System of Texas;  
3 (C) the Texas Municipal Retirement System;  
4 (D) the Texas County and District Retirement  
5 System; and  
6 (E) the Texas Emergency Services Retirement  
7 System.

8 Sec. 807.002. SCRUTINIZED BUSINESS OPERATIONS. A company  
9 engages in scrutinized business operations if:

10 (1) the company has business operations that involve  
11 contracts with or providing supplies or services to the government  
12 of Iran, a company in which the government of Iran has any direct or  
13 indirect equity share, a consortium or project commissioned by the  
14 government of Iran, or a company involved in a consortium or project  
15 commissioned by the government of Iran; or

16 (2) the company supplies military equipment to Iran.

17 Sec. 807.003. EXCEPTION. Notwithstanding any provision of  
18 this chapter, a company that the United States government  
19 affirmatively declares to be excluded from its federal sanctions  
20 regime relating to Iran is not subject to divestment or the  
21 investment prohibition under this chapter.

22 Sec. 807.004. OTHER LEGAL OBLIGATIONS. With respect to  
23 actions taken in compliance with this chapter, including all good  
24 faith determinations regarding companies as required by this  
25 chapter, a state governmental entity is exempt from any conflicting  
26 statutory or common law obligations, including any obligations with  
27 respect to making investments, divesting from any investment,

1 preparing or maintaining any list of companies, or choosing asset  
2 managers, investment funds, or investments for the state  
3 governmental entity's securities portfolios.

4 Sec. 807.005. INDEMNIFICATION OF STATE GOVERNMENTAL  
5 ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an  
6 action, inaction, decision, divestment, investment, company  
7 communication, report, or other determination made or taken in  
8 connection with this chapter, the state shall, without regard to  
9 whether the person performed services for compensation, indemnify  
10 and hold harmless for actual damages, court costs, and attorney's  
11 fees adjudged against, and defend:

12 (1) an employee, a member of the governing body, or any  
13 other officer of a state governmental entity;

14 (2) a contractor of a state governmental entity;

15 (3) a former employee, a former member of the  
16 governing body, or any other former officer of a state governmental  
17 entity who was an employee or officer when the act or omission on  
18 which the damages are based occurred;

19 (4) a former contractor of a state governmental entity  
20 who was a contractor when the act or omission on which the damages  
21 are based occurred; and

22 (5) a state governmental entity.

23 Sec. 807.006. NO PRIVATE CAUSE OF ACTION. (a) A person,  
24 including a member, retiree, or beneficiary of a retirement system  
25 to which this chapter applies, an association, a research firm, a  
26 company, or any other person may not sue or pursue a private cause  
27 of action against the state, a state governmental entity, an

1 employee, a member of the governing body, or any other officer of a  
2 state governmental entity, or a contractor of a state governmental  
3 entity, for any claim or cause of action, including breach of  
4 fiduciary duty, or for violation of any constitutional, statutory,  
5 or regulatory requirement in connection with any action, inaction,  
6 decision, divestment, investment, company communication, report,  
7 or other determination made or taken in connection with this  
8 chapter.

9 (b) A person who files suit against the state, a state  
10 governmental entity, an employee, a member of the governing body,  
11 or any other officer of a state governmental entity, or a contractor  
12 of a state governmental entity, is liable for paying the costs and  
13 attorney's fees of a person sued in violation of this section.

14 Sec. 807.007. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT  
15 WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. A state  
16 governmental entity is not subject to a requirement of this chapter  
17 if the state governmental entity determines that the requirement  
18 would be inconsistent with its fiduciary responsibility with  
19 respect to the investment of entity assets or other duties imposed  
20 by law relating to the investment of entity assets, including the  
21 duty of care established under Section 67, Article XVI, Texas  
22 Constitution.

23 Sec. 807.008. RELIANCE ON COMPANY RESPONSE. The  
24 comptroller and a state governmental entity may rely on a company's  
25 response to a notice or communication made under this chapter  
26 without conducting any further investigation, research, or  
27 inquiry.

1           SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

2           Sec. 807.051. LISTED COMPANIES. (a) The comptroller shall  
3 prepare and maintain, and provide to each state governmental  
4 entity, a list of all scrutinized companies. In maintaining the  
5 list, the comptroller may review and rely, as appropriate in the  
6 comptroller's judgment, on publicly available information  
7 regarding companies with business operations in Iran, including  
8 information provided by the state, nonprofit organizations,  
9 research firms, international organizations, and governmental  
10 entities.

11           (b) The comptroller shall update the list annually or more  
12 often as the comptroller considers necessary, but not more often  
13 than quarterly, based on information from, among other sources,  
14 those listed in Subsection (a).

15           (c) Not later than the 30th day after the date the list of  
16 scrutinized companies is first provided or updated, the comptroller  
17 shall file the list with the presiding officer of each house of the  
18 legislature and the attorney general.

19           Sec. 807.052. IDENTIFICATION OF INVESTMENT IN LISTED  
20 COMPANIES. Not later than the 14th day after the date a state  
21 governmental entity receives the list provided under Section  
22 807.051, the state governmental entity shall notify the comptroller  
23 of the listed companies in which the state governmental entity owns  
24 direct holdings or indirect holdings.

25           Sec. 807.053. NOTICE TO LISTED COMPANY ENGAGED IN INACTIVE  
26 BUSINESS OPERATIONS. For each listed company identified under  
27 Section 807.052 that is engaged in only scrutinized inactive

1 business operations, the state governmental entity shall send a  
2 written notice informing the company of this chapter and  
3 encouraging the company to continue to refrain from initiating  
4 active business operations in Iran until it is able to avoid being  
5 considered a listed company. The state governmental entity shall  
6 continue the correspondence as the entity, in its sole discretion,  
7 considers necessary, but is not required to initiate correspondence  
8 more often than semiannually.

9 Sec. 807.054. ACTIONS RELATING TO LISTED COMPANY ENGAGED IN  
10 ACTIVE BUSINESS OPERATIONS. (a) For each listed company  
11 identified under Section 807.052 that is engaged in scrutinized  
12 active business operations, the state governmental entity shall  
13 send a written notice informing the company of its listed company  
14 status and warning the company that it may become subject to  
15 divestment by state governmental entities.

16 (b) The notice must offer the company the opportunity to  
17 clarify its Iran-related activities and must encourage the company,  
18 not later than the 90th day after the date the company receives  
19 notice under this section, to either cease its scrutinized business  
20 operations or convert the operations to inactive business  
21 operations in order to avoid qualifying for divestment by state  
22 governmental entities.

23 (c) If, during the time provided by Subsection (b), the  
24 company ceases scrutinized business operations, the comptroller  
25 shall remove the company from the list maintained under Section  
26 807.051 and this chapter will no longer apply to the company unless  
27 it resumes scrutinized business operations.

1       (d) If, during the time provided by Subsection (b), the  
2 company converts its scrutinized active business operations to  
3 inactive business operations, the company is subject to all  
4 provisions of this chapter relating to inactive business  
5 operations.

6       (e) If, after the time provided by Subsection (b) expires,  
7 the company continues to have scrutinized active business  
8 operations, the state governmental entity shall sell, redeem,  
9 divest, or withdraw all publicly traded securities of the company,  
10 except securities described by Section 807.056, according to the  
11 schedule provided by Section 807.055.

12       Sec. 807.055. DIVESTMENT OF ASSETS. (a) A state  
13 governmental entity required to sell, redeem, divest, or withdraw  
14 all publicly traded securities of a listed company shall comply  
15 with the following schedule:

16             (1) at least 50 percent of those assets must be removed  
17 from the state governmental entity's assets under management not  
18 later than the 270th day after the date the company receives notice  
19 under Section 807.054 or Subsection (b) unless the state  
20 governmental entity determines, based on a good faith exercise of  
21 its fiduciary discretion and subject to Subdivision (2), that a  
22 later date is more prudent; and

23             (2) 100 percent of those assets must be removed from  
24 the state governmental entity's assets under management not later  
25 than the 450th day after the date the company receives notice under  
26 Section 807.054 or Subsection (b).

27       (b) If a company that ceased scrutinized active business



1 operations after receiving notice under Section 807.054 resumes  
2 scrutinized active business operations, the state governmental  
3 entity shall send a written notice to the company informing it that  
4 the state governmental entity will sell, redeem, divest, or  
5 withdraw all publicly traded securities of the scrutinized company  
6 according to the schedule in Subsection (a).

7 (c) Except as provided by Subsection (a), a state  
8 governmental entity may delay the schedule for divestment under  
9 that subsection only to the extent that the state governmental  
10 entity determines, in the state governmental entity's good faith  
11 judgment, that divestment from listed companies will likely result  
12 in a loss in value or a benchmark deviation described by Section  
13 807.057(a). If a state governmental entity delays the schedule for  
14 divestment, the state governmental entity shall submit a report to  
15 the presiding officer of each house of the legislature and the  
16 attorney general stating the reasons and justification for the  
17 state governmental entity's delay in divestment from listed  
18 companies. The report must include documentation supporting its  
19 determination that the divestment would result in a loss in value or  
20 benchmark deviation described by Section 807.057(a), including  
21 objective numerical estimates. The state governmental entity shall  
22 update the report every six months.

23 Sec. 807.056. INVESTMENTS EXEMPTED FROM DIVESTMENT. A  
24 state governmental entity is not required to divest from any  
25 indirect holdings in actively or passively managed investment funds  
26 or private equity funds. The state governmental entity shall  
27 submit letters to the managers of investment funds containing

1 listed companies requesting that they consider removing those  
2 companies from the fund or create a similar actively or passively  
3 managed fund with indirect holdings devoid of listed companies. If  
4 the manager creates a similar fund with substantially the same  
5 management fees and same level of investment risk and anticipated  
6 return, the state governmental entity may replace all applicable  
7 investments with investments in the similar fund in a time frame  
8 consistent with prudent fiduciary standards.

9 Sec. 807.057. AUTHORIZED INVESTMENT IN LISTED COMPANIES.

10 (a) A state governmental entity may cease divesting from or may  
11 reinvest in one or more listed companies if clear and convincing  
12 evidence shows that:

13 (1) the state governmental entity has suffered or will  
14 suffer a loss in the hypothetical value of all assets under  
15 management by the state governmental entity as a result of having to  
16 divest from listed companies under this chapter; or

17 (2) an individual portfolio that uses a  
18 benchmark-aware strategy would be subject to an aggregate expected  
19 deviation from its benchmark as a result of having to divest from  
20 listed companies under this chapter.

21 (b) A state governmental entity may cease divesting from or  
22 may reinvest in a listed company as provided by this section only to  
23 the extent necessary to ensure that the state governmental entity  
24 does not suffer a loss in value or deviate from its benchmark as  
25 described by Subsection (a).

26 (c) Before a state governmental entity may cease divesting  
27 from or may reinvest in a listed company under this section, the

1 state governmental entity must provide a written report to the  
2 presiding officer of each house of the legislature and the attorney  
3 general setting forth the reason and justification, supported by  
4 clear and convincing evidence, for its decisions to cease  
5 divestment, to reinvest, or to remain invested in a listed company.

6 (d) The state governmental entity shall update the report  
7 required by Subsection (c) semiannually, as applicable.

8 (e) This section does not apply to reinvestment in a company  
9 that is no longer a listed company.

10 Sec. 807.058. PROHIBITED INVESTMENTS. Except as provided  
11 by Sections 807.003 and 807.057, a state governmental entity may  
12 not acquire securities of a listed company.

13 SUBCHAPTER C. EXPIRATION; REPORT; ENFORCEMENT

14 Sec. 807.101. EXPIRATION OF CHAPTER. This chapter expires  
15 on the earlier of:

16 (1) the date the United States revokes its sanctions  
17 against the government of Iran; or

18 (2) the date the United States Congress or the  
19 president of the United States, through legislation or executive  
20 order, declares that mandatory divestment of the type provided for  
21 in this chapter interferes with the conduct of United States  
22 foreign policy.

23 Sec. 807.102. REPORT. Not later than December 31 of each  
24 year, each state governmental entity shall file a publicly  
25 available report with the presiding officer of each house of the  
26 legislature and the attorney general, that:

27 (1) identifies all securities sold, redeemed,

1 divested, or withdrawn in compliance with Section 807.055;

2 (2) identifies all prohibited investments under  
3 Section 807.058; and

4 (3) summarizes any changes made under Section 807.056.

5 Sec. 807.103. ENFORCEMENT. The attorney general may bring  
6 any action necessary to enforce this chapter.

7 SECTION 2. Not later than January 1, 2014, the comptroller  
8 of public accounts shall prepare and provide to each state  
9 governmental entity, as defined by Section 807.001, Government  
10 Code, as added by this Act, the list of scrutinized companies  
11 required by Section 807.051, Government Code, as added by this Act.

12 SECTION 3. This Act takes effect January 1, 2014.